

RESPONSE TO FCC "REQUEST FOR COMMENT"

PR Doc # 92-80

Pursuant to the FCC's April 9th "request for comment on proposals to speed processing of MMDS applications", I hereby submit the comments below to address the FCC rules and related factors that significantly influenced my filing as a sincere MMDS applicant. Further, these comments reflect my firm position and opposition to any consideration of a retroactive rule change that would apply to "settlement groups".

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(a) As an adjunct to the efforts of Congress to re-regulate the cable industry, the FCC demonstrated a position that competition is a better approach, and that "wireless cable" technology could be a viable candidate to foster a competitive industry. The obvious Congressional objective was for the FCC to create a filing environment for the MMDS licenses that would attract qualified non-monopoly participation by average American citizens through rule-making which would enable them to compete on equal footing with the media giants.

(b) An anti-monopoly initiative was apparent in the FCC's adoption of a "random selection process" (lottery) in lieu of an auction that would have sold the MMDS licenses to the highest bidder.

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(c) This anti-monopoly rule-making was emphasized by the FCC's adoption of its rules regarding "preference credits" that would attract ordinary American citizens to the licensing process by crediting extra ping pong balls to minority applicants or applicants that do not own controlling interest in a mass media. Even more significant was the FCC's rules allowing alliance strategies enabling applicants to leverage their risks through post-filing, pre-lottery "settlement groups".

(d) The FCC imposes rigid application criteria as a post-filing prerequisite without which applications could not qualify to be in the lottery. This criteria ruled that applications were to include complex engineering, technical specifications, interference analysis, legal data and financial certification to demonstrate feasibility as an application (if awarded the license) that could result in a developed MMDS system serving the public. Accordingly, the preparation of an application to include the aforementioned criteria can represent substantial costs to an applicant.

(e) In view of the considerable costs to prepare a viable application, there is substantially more at risk to the applicant than a \$155.00 filing fee! Understanding the risks, it was the FCC's own rule-making to allow "preference credits" and alliance strategies that made these risks acceptable. In fact, without the FCC's rules specifically allowing "settlement groups", the Congressional objective to create a filing environment that would attract qualified non-monopoly participation by average American citizens would have failed miserably!

Conversely, the FCC has implied that MMDS applicants who would be party to alliances are "insincere speculators" with no real interest in seeing an awarded license developed to provide an MMDS service to the public. This implication ignores the viability of an awarded license being shared by a "settlement group" of co-owners with combined resources that collectively represent greater finance ability to foster a viable MMDS service. Ironically, the alliance concept of co-ownership appeals to applicants of a sincere posture but proves less appealing to "insincere speculators" often having a "win-it-all" lottery mentality.

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(f) For the FCC to now even entertain a retroactive change in the alliance rules under which thousands of applicants filed in good faith would be virtually unconstitutional! All due respects to law-making process that would "grandfather" individuals that filed under the previous rules, the FCC should nevertheless comprehend that to even consider any such retroactive rule change would still be a violation of the MMDS applicants' trust and constitutional rights as American citizens. Alliance strategies, especially resulting in "full settlements", greatly leverage the lottery risk for the applicant and, per the preference of the FCC, expedite the administration of the awards process!

MMDS Applicant: Signed Robert Scott Miller Jr.

Date June 22, 1992

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